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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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10 ALICIA HERNANDEZ, EMMA WHITE,
11 KEITH LINDNER, TROY FRYE,
12 COSZETTA TEAGUE, IESHA BROWN,
13 RUSSEL and BRENDA SIMONEAUX,
14 JOHN and YVONNE DEMARTINO, ROSE
WILSON, TIFFANIE HOOD, GEORGE and
CYNDI FLOYD, DEBORA GRANJA, and
DIANA TREVINO, individually and behalf
of all others similarly situated,

No. C 18-07354 WHA

**ORDER DENYING DEFENDANT'S
MOTION TO STAY**

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Plaintiffs,

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v.

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WELLS FARGO BANK, N.A.,

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Defendant.

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In this class action involving mortgage foreclosures, Wells Fargo moves to stay this
action pending the resolution of its FRCP 23(f) appeal. For the reasons stated below, the motion
is **DENIED**.

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The background of this action has been described in prior orders (Dkt. Nos. 87, 217).
Plaintiffs allege, among other things, that defendant Wells Fargo, N.A. breached its contract by
failing to notify them that they qualified for mortgage modifications under federally supported
programs because of a calculation error in defendant's system which misstated fees and resulted
in incorrect mortgage modification denials. In January, this Court certified a nationwide class of

1 individuals whose homes Well Fargo then foreclosed on after it failed to offer them mortgage
2 modifications they otherwise qualified for pursuant to federal programs (Dkt. No. 217).

3 Class notice is set out to go out by March 30, and the opt-out period expires on May 11.
4 Given that the trial in this action was also set to begin on May 11, and pursuant to the parties'
5 stipulated request to delay ruling on defendant's partial summary judgment motion until after the
6 opt-out period has expired, a recent order vacated the May 11 trial date. As of now, there is no
7 set trial date. The undersigned judge will set the trial date for this summer at defendant's
8 summary judgment hearing (Dkt. No. 256).

9 Recently, defendant filed a petition to our court of appeals seeking interlocutory appeal of
10 the class certification order pursuant to FRCP 23(f). Defendant also filed this instant motion to
11 stay this action pending resolution on its petition for review and, if the petition is granted,
12 pending the outcome of that appeal (Dkt. No. 229).

13 Petitions appealing a district court's certification order pursuant to FRCP 23(f) do not
14 automatically stay the proceedings unless either the district judge or the court of appeals so
15 orders. In deciding whether to stay this action, the following four factors should be weighed: (1)
16 likelihood of success on the merits of the appeal; (2) harm to defendant in the absence of a stay;
17 (3) harm to plaintiffs if stayed; and (4) public interest. *See Leiva-Perez v. Holder*, 640 F.3d 962,
18 964–70 (9th Cir. 2011). The first two factors are the “most critical.” *Ibid.* (quoting *Nken v.*
19 *Holder*, 556 U.S. 418, 434 (2009)). The party requesting a stay bears the burden of showing the
20 circumstances warrant a stay. *See Nken*, at 433–44. For the reasons stated below, this order
21 finds that defendant has failed to meet its burden.

22 Defendant contends its petition raises a substantial case on the merits of its appeal
23 because the class certification order failed to address how causation and damages will be proved
24 using common evidence. This is the same argument that was made and rejected at class
25 certification (Dkt. No. 217 at 7). This argument presents a mere disagreement with the
26 determinations in the class certification order that common issues predominate over
27 individualized inquiries.

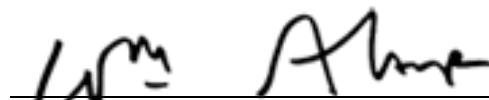
1 Even assuming substantial questions exist, defendant has failed to establish a likelihood
2 of irreparable injury if the stay is denied or that the stay is in the public interest. Defendant
3 contends, if the stay is denied, it would be irreparably harmed because it would be forced to
4 incur substantial costs associated with trial preparation in the next three months and, of course,
5 for the trial itself. This argument is rendered moot, however, considering a recent order vacated
6 the impending trial date of May 11. Since trial will not be held until after both the opt-period has
7 expired and until after defendant's summary judgment motion is heard, there is substantial time
8 between now and then for our court of appeals to determine whether it will consider defendant's
9 interlocutory appeal. Accordingly, defendant will not be irreparably harmed if the stay is denied.

10 Lastly, defendant's assertion that the public interest factor weighs in its favor because
11 class members will be confused if they receive multiple notices — assuming our court of appeals
12 decides to first consider the appeal and then to decertify or modify the class — is similarly
13 rendered moot by this Court's recent order approving the parties' proposal for distribution of
14 class notice and setting a date for which notice is to be sent out (Dkt. No. 256).

15 After weighing all the factors, this order holds that defendant's motion is **DENIED**.

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17 **IT IS SO ORDERED.**

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19 Dated: March 19, 2020.

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23 WILLIAM ALSUP
24 UNITED STATES DISTRICT JUDGE
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